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Editorial: The EGPA Study Group on Justice and Court Administration: European Cooperation in Court Administration Studies

By Philip Langbroek, Markus Zimmer, Andreas Lienhard, Luis Palma (Editors) and Marco Fabri, Daniel Kettiger (Guest editors)



With this issue of the Journal, the editors inaugurate the first of what over time will be a series of special issues of the IJCA. We take considerable pride in having organized this special issue reflecting recent research and scholarship by members of the European Group for Public Administration (EGPA) study group. We gratefully acknowledge the work of our reviewers, most of whom are members of ICJA's Editorial Board; our English-language proof-readers: and our Technical Editor, Linda Wade-Bahr, for compiling this special issue.

The [EGPA Study group on Justice and Court Administration](#) conducted its inaugural conference in Bergen, Norway, in September. In response to our call for session papers, we received an unexpectedly large and fruitful yield, including a retrospective on court administration reform and modernization in Switzerland. Andreas Lienhard and Daniel Kettiger, from the [Center of Competence for Public Management](#) in Berne earlier received a significant grant for research on court administration. The Sinergia project, financed by the [Swiss National Foundation](#), ongoing since 1 May 2012, will generate dissertations, articles, and other publications. The [Sinergia project on court administration in Switzerland](#) is connected to the EGPA Study Group.

Academic Research on Court Administration

For researchers and academics interested in justice and court administration, this special issue confirms that their research is not simply an academic exercise. Ideally, research in court administration should yield results with a practical orientation, results that have the potential to be applied in court- and justice-system environments. Courts function as key components of civil society's institutions of justice, administering civil and criminal justice as well as promoting conflict resolution. Civil societies benefit from optimally functional court systems; they enhance the civic stability that undergirds the freedoms we value.

The Shift from Law to Organization and Governance

Apart from the USA, courts in most countries functioned as the domain of judges and lawyers until about 15 years ago when western-oriented democracies, traditional and newly forged, began a fundamental transition process from courts as government-sanctioned legal forums with restricted access to more open and publicly-oriented institutions. The discipline of public administration had traditionally excluded courts from serious consideration as public institutions. In Europe and elsewhere, small but growing cadres of academics have spurred this transition, promoting the development and elaboration of court administration as academic and professional specializations. They persuasively argued that as institutional components of justice system frameworks, courts accommodate myriad operating procedures and safeguards, are structured on specific organizational development assumptions, and function on the bases of procedural, operational, and juridical knowledge. Courts and justice administration are disciplines not only integral to civil society; they also can be fascinating objects of study and research because they operate in socially sensitive normative contexts that support and embed the collective jurisprudence refined over time by successive generations of judges presumably committed to upholding the rule of law.

The judicial function of ruling is legally attributed to the courts in which judges serve. The tradition of judges having the discretion to rule on their own irrespective of established jurisprudence and civil society context has largely been discredited. Judges now serve their adjudicative roles in an institutional context corralled by

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Editorial: Continued

established jurisprudence and other constraining elements, even in civil law systems. More broadly, all aspects of organizational management and operations -- budgeting, staffing, facilities, logistics, security, knowledge management, procedural innovation, training of court staff and of judges, judicial and staff ethics and discipline, and integrity policies are handled within an institutional framework of which adjudication is the primary product. In this institutional context, judicial independence is now comprehended from two perspectives – that of the independence of judges to interpret and apply the law without interference from outside interests, coercion or inducement, and that of the autonomy of the institutions within which judges perform their adjudicative functions. A fundamental question for constitutionalists with an interest in courts is whether and to what extent judicial decision-making is subject to outside influence when the institutional framework within which courts operate is overseen and controlled by political authorities outside of the judicial power of government. Their interests may not completely and perpetually coincide with those of the effective administration of justice and the pursuit of the rule of law, also when the debate is only about court efficiency. A related question is whether courts are institutionally capable of establishing their own governance and public administration bureaucracies that function both efficiently and effectively and that do not intrude on or detract from their primary role as adjudicative organizations. Are judges, given their professional training and experience, qualified to serve as high-level administrators, competent bureaucratic managers, and innovative and creative leaders? Or should those roles be the province of professionals with training and experience in those disciplines but performing their duties within the framework of the judicial power.

Court Needs.

As we survey the international landscape of myriad court systems, the perspective is troubling. Many judicial systems are challenged with high-volume caseloads. By global best-practice standards, a number remain steeped in practices and procedures that render their efforts to address those caseloads ineffective and inefficient. Analytical studies in administrative science that seek to respond to these challenges disagree on where to draw clear lines between judicial and public administration in how to effectively manage court and judicial systems, but they focus on the challenges as pragmatic and seek to address them by examining public-sector institutions. The tradition dates back more than 75 years. Willoughby in 1929 recognized courts as complex organizations that can be analyzed in terms of the characteristics they share with other public organizations.¹

Developing Academic Networks with a Focus on Court Administration in Europe

Simultaneously, justice institution and process studies continue to produce numerous studies steeped in the formalistic legal tradition, which generally prescribes insularity from social science and public administration studies and insists that courts are unique and functionally dissimilar from their other public-sector counterparts.

Still under-represented in this expanding field of judicial system scholarship are empirical research studies, notwithstanding the pervasive presence of the law in all facets of society. This is particularly true in Europe, where the embrace of research-based judicial administration studies has lagged in comparison to the United States, Canada and Australia, notwithstanding efforts to the contrary undertaken by individual scholars, regional research institutions and international agencies.

The active research institutions include [The Montaigne Centre of the Utrecht Law School](#) in the Netherlands; The [Research Institute on Judicial Systems \(IRSIG-CNR\)](#) of the Research Council of Italy in Bologna, Italy; [The Observatory on Justice of the University of Coimbra](#), Portugal; The Research Centre for Judicial Studies of the University of Bologna, Italy, [The Institute of Law and Technology, Universitat Autònoma de Barcelona, Spain](#); and [The Center of Competence for Public Management at the University of Bern](#) in Switzerland. Last but not least we can refer to the EU-funded [Menu For Justice](#) project on the training needs of lawyers and -judges in Europe with more than 30 participating institutes.

The permanent [Study Group on “Justice and Court Administration”](#) within the [European Group of Public Administration \(EGPA\)](#) referenced above is another tile in the developing mosaic of European judicial administration studies. This Study Group is a renewed version of the one established in 1999, when EGPA dedicated its annual conference to “Delivering and Managing Justice in the 21st Century.” This event was a milestone for judicial administration studies in Europe, where, finally, public administration paid attention to the judiciary; since that time, however, interest has vacillated.

The Swiss Sinergia Project on Justice Management and the EGPA Studygroup.

In order to enhance scholarship in court administration it is also necessary to enhance and enrich exchanges between judges, court administrators and scholars. IACA organises such platforms in its conferences and encourages such exchanges in this Journal.

Switzerland is a country with considerable diversity in language, tradition and local cultures: Germanic in its north; French in its west; and Italian in its South. Organised as a federation of small and fiercely independent states, it has a long-standing tradition in both representative and direct democracy stretching back to the 16th Century. Any form of public management in Switzerland, therefore, may be regarded as a challenge for policymakers.

Developments in modern public administration, drawing on private sector experience, compel the view that improved and modernized management practices in judicial systems will become a necessity in the future. Without improved knowledge and understanding of the complex interplay of administration, adjudication and the effective pursuit of the rule of law, the development of refined and efficient management models for the judiciary will be hindered. A primary objective of the Sinergia project financed by the Swiss National Foundation, is to more fully understand and acquire knowledge of the Swiss judiciary as the justice-guardian of civil society and as a public sector organisation.

¹ W.F. Willoughby, *Principles of Judicial Administration*, Washington, D.C., The Brookings Institution, 1929.

In the context of the European networks of scholars and researchers with an interest in court administration, the Sinergia Project reflects an opportunity; this, of course, also applies to scholars in other regions with similar interests. Offering the platforms of IACA and the EGPA Study Group to the participants in the Sinergia project, therefore, seemed to follow naturally.

This basic research is carried out with regard to the development of integrated management models for the administration of justice. In addition, it is expected that the research project will yield numerous methodological findings related to research in court and justice systems. This will generate added scientific value. The questions dealt with in this project are being approached on an interdisciplinary basis. Gaining an insight into the judiciary from outside involves studying the interaction of legal, sociological, macro-economic, psychological, historical and political science aspects. In addition, research into the functioning of judicial systems, their organisational impacts, internal processes and the interaction between the people working within them can most profitably proceed only on an interdisciplinary basis.

Over the next few years, the outcomes of the Sinergia Project should be of interest for our readership. The project is based on a cooperation between the [Center of Competence for Public management in Berne](#), with the Universities of Zurich, Lucerne, St. Gallen, Idheap and the [Montaigne Centre of Utrecht School of Law](#) in the Netherlands.

This Special Issue

This special issue contains 10 articles by authors from Australia, Switzerland, Italy, France, Finland, Norway and Italy.

The Study Group on "Justice and Court Administration," with its strong and developing network, seeks to stimulate academics and practitioners from a variety of backgrounds, interests, skill areas, countries, and professions to share experience, practices, ideas and knowledge. The articles in this special issue of the Journal reflect current Study Group scholarship, and IJCA is proud to serve as its delivery vehicle. The areas of interest are broad and deal with issues such as: judicial governance, court and case management, statistics, judicial budget and planning, records and space management, information and communication technology, performance assessment, delay reduction programs, quality of justice, ethics, corruption, fundamental rights, mediation, therapeutic jurisprudence.

The focus is both on national and global issues and solutions, keeping in mind that: *"Comparativists have certainly learned that legal principles are not absolute [...] and the conflict of values has to be reconciled not by the rigor of artificial logic, but by a flexible and pragmatic recognition that [...] a compromise solution has to be formed"*²

A Special Thanks to the Volunteers in our Association

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² (Mauro Cappelletti, *The Judicial Process in Comparative Perspective*, Oxford, Clarendon Press, 1989, p. 13.)